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COMMON CARRIER BUREAU SEEKS ADDITIONAL COMMENT ON ISSUES RELATING TO CLEC ACCESS CHARGE REFORM

PLEADING CYCLE ESTABLISHED

CC Docket No. 96-262

Comment Date: 15 days after publication in the Federal Register

Reply Comment Date: 30 days after publication in the Federal Register

1. The Commission is currently considering whether and how to reform the manner in which competitive local exchange carriers (CLECs) may tariff the charges for the switched local exchange access service that they provide to inter-exchange carriers (IXCs). In connection with this inquiry, the Common Carrier Bureau (Bureau) seeks additional comment on certain issues that may inform analysis of the relevant issues.

2. In the *Hyperion Order*, the Commission adopted a regime of permissive detariffing to govern CLECs in their provision of interstate access services, and it sought comment on whether such CLEC services should be mandatorily detariffed.¹ In the *Pricing Flexibility Order*, released last year, the Commission again revisited the question of CLEC access rates, seeking comment on a broad variety of issues, including the possibility of establishing a benchmark for CLEC access rates and mandatorily detariffing CLEC access services.²

¹ *Hyperion Telecommunications, Inc., Petition for Forbearance, Memorandum Opinion & Order*, 12 FCC Rcd 8596, ¶¶ 27, 34 (1997) (*Hyperion Order*). See also *Mandatory Detariffing Public Notice*, 15 FCC Rcd 10181 (2000) (refreshing the record on mandatory detariffing for CLECs in the wake of the D.C. Circuit's decision upholding mandatory detariffing for IXCs).

² *Access Charge Reform*, CC Docket No. 96-262, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221, ¶¶ 239-57 (1999) (*Pricing Flexibility Order*). See also *Common Carrier Bureau Seeks Comment on the Request for Emergency Temporary Relief of the Minnesota CLEC Consortium and the Rural Independent Competitive Alliance Enjoining AT&T Corp from Discontinuing Service Pending Final Decision*, CC Docket No. 96-262, Public Notice, DA-00-1067, 2000 WL 217601 (Comm. Carr. Bur., May 15, 2000).

A. A Rural Exemption to Benchmarked Rates

3. Many of the comments submitted in the access charge reform docket have advocated establishing a benchmark for CLEC access charges so that charges at or below the benchmark would be presumed to be just and reasonable. These proposals have suggested a variety of alternatives for treating charges above the benchmark. Whatever the precise method of implementing a benchmark, however, it could apply to a broad range of CLECs with widely varying cost characteristics and operating in many different markets.

4. The Commission has previously observed that many CLECs' access rates may be "higher due to the CLECs' high start-up costs for building new networks, their small geographical service areas, and the limited number of subscribers over which CLECs can distribute costs."³ At the same time, the Commission has noted that requiring IXC to bear these costs "may impose unfair burdens on IXC customers that pay rates reflecting these CLEC costs even though the IXC customers may not subscribe to the CLEC."⁴ The Commission has also recognized that it may be problematic to limit all CLECs to a single benchmarked rate, regardless of the characteristics of the market that they serve. Thus, in the *Pricing Flexibility Order*, the Commission raised the prospect that a benchmark might vary depending on "whether the CLEC serves high cost areas or low cost areas."⁵ In particular, it is noteworthy that the regulated incumbents whose access rates are established by the National Exchange Carrier Association (NECA) are permitted to tariff rates substantially above those of the ILECs that serve more concentrated, populous areas. This is true, in large part, because of the higher costs associated with providing service in the more rural, sparsely populated areas that the NECA carriers serve.

5. In order more fully to inform the Commission's consideration of commenters' suggestions for benchmarking, the Bureau seeks additional comment on whether and how to create a "rural exemption" that would prevent a CLEC operating in a rural or high-cost area from being subject to a benchmark that may be more appropriate for CLECs doing business in more concentrated, urbanized areas. Is such an exemption necessary? How should the Commission define the types of areas in which such a rural exemption would be available to CLECs? Can the definition be premised on the Communications Act's definition of "rural telephone company"?⁶ Should any exemption apply to all areas that fall outside of the defined metropolitan statistical areas (MSAs), or is this limitation either under- or over-inclusive? Should the availability of a rural exemption turn instead on the overall population density within a particular CLEC's service area, or should it turn on the density of the CLEC's *customers* within its service area? If population density is the appropriate factor, commenters are requested to propose what density figure should serve as the cut-off for the availability of a rural exemption and to explain why that number is the appropriate one. Should the Commission tie such an exemption to the presence, within the CLEC's service area (or within a given distance of the service area), of a town or incorporated place with a certain population? Should a CLEC be required to qualify for and receive high-cost or rural universal service support before it could avail itself of such a rural exemption?

6. How should a rural exemption apply where, within a single service area, a CLEC serves

³ *Pricing Flexibility Order*, 14 FCC Rcd at 14343, ¶ 244.

⁴ *Pricing Flexibility Order*, 14 FCC Rcd at 14343, ¶ 244.

⁵ *Pricing Flexibility Order*, 14 FCC Rcd at 14345, ¶ 248.

⁶ 47 U.S.C. § 154(37).

customers that reside in areas of markedly different density? For example, should the exemption – and the higher benchmarked access rates that likely would accompany it – apply to CLEC customers in very sparsely populated areas but not to those customers that fall in a small town within the same service area? Is it feasible for a CLEC to charge different access rates within a single service area depending on the population density surrounding particular end users? Should the availability of such an exemption be determined by the actual location of a CLEC's customers or by the location of a CLEC's switch or some other portion of its network?

7. Should a rural exemption be tied to the volume of access traffic generated by a CLEC's customers? Thus, should a CLEC serving primarily or exclusively a large institution, or some other high-volume user, qualify for a rural exemption? Alternatively, should the availability of a rural exemption be tied to the number or type of a CLEC's customers? The Bureau also solicits any additional comments that may bear on the appropriate definition or limitation of a rural exemption to benchmarked rates for CLEC access service. Specifically, comment is invited on the proposed definitions for a rural exemption submitted by the Rural Independent Competitive Alliance and by Sprint Corporation.⁷

B. Information On CLEC Access Rates

8. The comments previously submitted in this proceeding differ markedly on the question of whether CLEC access charges substantially exceed ILEC rates. Some commenters assert that a significant number of CLECs charge substantially above the ILEC rate and that these CLECs generate enough access traffic that the higher rates place a measurable and significant burden on the long-distance market. By contrast, others argue that a proper comparison of CLEC and ILEC rates reveals that most competitive carriers are charging close to what incumbents charge for access service. These commenters assert that a meaningful comparison of rates requires the inclusion in the ILEC rate of additional, flat-rate charges that incumbents impose like the presubscribed interexchange carrier charge (PICC) for multi-line business customers. It is noteworthy for these purposes that, in its *CALLS Order*, the Commission eliminated several of the flat-rated charges that participating LECs charged to IXCs.⁸

9. The Commission has received relatively little evidence to support either side's argument in this debate. In order to shed additional light on this issue, staff has requested that certain IXCs submit, on an ex parte basis, information concerning the CLEC access charges for which they have been billed in the recent past. These IXCs have submitted to the Commission information, broken down by CLEC, on the amount that they have been billed for access service and the number of access minutes that these figures represent. (The IXCs submitting this information to the Commission have requested confidential treatment of various portions of their submissions, including the identity of the various CLECs with which they do business.)

10. The Bureau seeks additional information on how CLEC access rates compare to ILEC rates. For example, should the multi-line business PICC or other charges be included in ILEC access

⁷ See August 4, 2000 letter from David Cosson, Counsel for the Rural Independent Competitive Alliance, to Dorothy Atwood, Chief, Common Carrier Bureau, available at http://gulfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6511558133; October 11, 2000 letter from Richard Juhnke, General Attorney for Sprint Corporation, to Magalie Roman Salas, Secretary, FCC, available at http://gulfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6511959359.

⁸ Access Charge Reform, CC Docket No. 96-262, Sixth Report & Order, 15 FCC Rcd 12962 (2000) (*CALLS Order*).

revenue when comparing incumbents' and competitors' rates for switched access service? Additional specific information is also sought on the level of CLEC access rates. Thus, for example, interested parties are requested to file with the Commission surveys or other data regarding the range of access charges imposed by either CLECs or ILECs.⁹

C. Procedural Issues

11. In its *Pricing Flexibility Order*, the Commission included an initial regulatory flexibility analysis relating to the issue of CLEC access charges.¹⁰ That analysis is incorporated herein by reference, and the Bureau invites further comment on it. Additionally, to the extent that such comments have not already been submitted, the Bureau invites comment on significant alternatives for the reform of CLEC access charges that would: establish different compliance requirements for small entities; clarify, consolidate or simplify compliance requirements for small entities; or exempt small entities from coverage.

12. Interested parties may file comments on the issues raised in this public notice up to **15 days after publication of the Public Notice in the Federal Register**. Reply comments are due **30 days after publication of the Public Notice in the Federal Register**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.¹¹

13. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number appearing in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

14. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth St., S.W., Room TW-A325, Washington, DC 20554.

15. Comments should be clearly labeled with CC Docket No. 96-262. Parties also should send their comments, either in hard copy or on diskette, to the Commission's copy contractor, International

⁹ The Association for Local Telecommunications Services filed such a survey with its reply comments. See November 29, 1999 Reply Comments of the Association for Local Telecommunications Services, Attachment A, available at http://gulfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6010250515 and http://gulfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6010250516. However, since that survey was conducted, the Commission's *CALLS Order* substantially changed the rate levels and structures for incumbent LECs' access service. See 15 FCC Rcd 12962.

¹⁰ *Pricing Flexibility Order*, 14 FCC Rcd at 14352-55, ¶¶ 268-78.

¹¹ See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998).

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16. To the extent that parties file information on the level of either CLEC or ILEC access charges, they are requested to file the data in an electronic spreadsheet format, in addition to filing it in whatever other form they submit. Parties submitting such information should send computer diskettes to Jeffrey H. Dygert, Common Carrier Bureau, 445 12th Street, S.W., Washington D.C. 20554, or transmit the information by e-mail to jdygert@fcc.gov. The diskette should be clearly labeled with the party's name, proceeding and date of submission, and it should be accompanied by a cover letter.

17. For further information contact Scott K. Bergmann at 202-418-0940 or Jeffrey H. Dygert at 202-418-1500.